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THE TEXAS CONVENTION OF 1845¹

ANNIE MIDDLETON

III. THE WORK OF THE CONVENTION

1. *The Acceptance of Annexation*

Of the sixty-one deputies to be elected to the convention, President Jones apportioned fourteen from the twelve western counties, eleven from the five northern, thirteen from the eight eastern, and twenty-three from the eleven middle. According to the votes cast at the last annual election, this gave an average of one deputy for every one hundred and fifty-four voters in the west, for every two hundred and twenty-seven in the north and east, and for every two hundred and twenty-three in the middle counties.² This basis of representation was more favorable to the West than its most enthusiastic advocates could have expected to obtain from Congress; therefore, all party dissension, all petty jealousies, and all antipathies were forgotten. Moreover, numerous sources of evidence emphasize the fact that this apportionment was satisfactory not only to the West but also to every other section of the Republic. *The Texas National Register* (Washington), May 14, said, "The representation appears to be predicated upon the most equitable basis, and will doubtless meet with the sanction of the true friends of annexation in every part of the Republic." Upon receiving the proclamation recommending the election of deputies to the convention, D. S. Kaufman of Sabine Town wrote President Jones:

. . . The basis is just, equitable, and Republican, and for it you will receive the thanks of a large majority of your fellow-citizens. The country knows and appreciates your motives. They know well that if Congress had fixed the basis, it would have been perhaps almost impossible to secure a different one; that amidst conflicts among the members, the great question of annexation would have been delayed if not defeated. . . .

¹This is a continuation of Miss Middleton's paper in the April QUARTERLY on "Donelson's Mission to Texas in Behalf of Annexation." Together the two articles constituted her thesis for the M. A. degree at the University of Texas.

²*Texas National Register* (Washington), May 8, 1845.

Your proclamation was received here, and everywhere I can hear from, with the utmost enthusiasm. It has at once satisfied your numerous friends. . . . The basis may not suit some as well as that Congress would have established, but nevertheless it is founded upon the basis of eternal justice; it suits two-thirds of the people, and *will not be attacked*. . . .

In his endorsement of this letter, Jones said: "Mr. Kaufman is as ardent and as intelligent a friend of annexation as there is in Texas or in the United States. If he is perfectly satisfied with my course, I think I must be right."³ Furthermore, the President's course was very satisfactory to a large majority of the friends of annexation not only because the basis was considered "just and equitable," but, also, because it would accelerate the meeting of the convention by at least two months, and would thus give ample time for deliberation and action, which could not safely be taken if the convention had not met until called by Congress. Time for deliberation was imperative, for the joint resolution required, as we have seen, that the state constitution should be adopted by the people and should be transmitted to the President of the United States in time for him to present it to Congress on or before January 1, 1846.

During the month of May, almost every county in the Republic held public demonstrations endorsing the action of President Jones in calling the convention. The mass meeting held at Brenham, May 12, is one of the many instances in which the people publicly expressed a desire to consummate annexation speedily on the basis of the American proposal. At this meeting the people expressed their approval of the President's proclamation, instructed their senators and representatives to accept the joint resolution as soon as possible after Congress had assembled, urged all the counties to elect delegates to the convention on June 4, and appointed a committee of five to assist in carrying out the measure of annexation by corresponding with other committees in the Republic.⁴ Despite the fact, however, that the people had expressed so enthusiastically their preference for annexation, on May 14 a public meeting at Bastrop condemned the President for calling the con-

³Kaufman to Jones, May 22, 1845. Jones, *Memoranda and Official Correspondence of the Republic of Texas*, 464-465.

⁴*Texas National Register* (Washington), May 15, 1845.

vention, and on June 19, the anti-annexationists met at Crockett and agreed to use all honorable means in their power "to perpetuate inviolate the independent national existence of the Republic of Texas."⁵

Heretofore, the middle and eastern counties had been the bitterest opponents of the President, but in the calling of the convention they gave him their unanimous support, as their main object was to secure annexation with as much unanimity and as little delay as was practicable, and they believed that this act settled annexation so far as it rested with the people of Texas. Another reason for endorsing the President's action was that they considered a united cooperation of the people with the executive and legislative branches as the only possible means of effecting annexation, since the whole proceeding was extra-constitutional, and since it was only by the consent of the government then existing that any steps taken for effecting an organic change in the laws could become valid. Regardless of this fact, however, some of the anti-party men still desired to overthrow the Jones administration. In consequence of this, the *Texas National Register* urged the opponents of the President to "abstain from any violent and irregular proceedings, and not to attempt to disorganize the present Government," as they had threatened to do. On the day appointed by the President, every county in the Republic held the elections, which were generally characterized by good order and harmony, but which in a few instances ended in most shameful rows. At La Grange several men were seen "rolling in the dirt, scratching and tearing each other's clothes and faces," and this scene was followed by a duel, which resulted in the death of the late sheriff of the county.⁶ Since the people considered that their dearest interests would be in jeopardy in the convention, they elected their most experienced and ablest champions to represent them in the new political arena, but only two of the delegates chosen were native Texans. The others were former citizens of the United States, a majority of whom had come to Texas during the era of the Republic.⁷

⁵*Texas National Register* (Washington), June 26, 1845.

⁶*Texas National Register* (Washington), June 11, 1845.

⁷Elliott to Aberdeen, August 22, 1845. SOUTHWESTERN HISTORICAL QUARTERLY, XX, 302.

Congress expressed its approval of the convention by passing the following act, June 23, 1845:

Section 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas in Congress assembled, That the members of the Convention, assembled by the President for the purpose of framing a constitution preparatory to the admission of Texas into the Union, be, and they are hereby entitled to the same pay and mileage as the members of Congress are now entitled to by law, and such officers as the Convention may deem necessary to elect shall be entitled to the same pay as similar officers of the House of Representatives.

Section 2. Be it further enacted, That the members of said Convention shall be entitled to franking privileges and all other privileges secured by the members of Congress.

Section 3. Be it further enacted, That a sufficient amount of money is hereby appropriated to pay the expenses above contemplated and such necessary contingent expenditures as may be voted by said Convention, which amount shall be paid by the Treasurer, on the joint warrant of the President and the Secretary of the said Convention.⁸

The convention had been called to meet at Austin, July 4, 1845, but as a majority of the delegates elect were in the city before the appointed time, an informal meeting was held in the afternoon of July 3. After some discussion, Thomas J. Rusk,⁹ acting as chairman of the meeting, appointed a committee of fifteen to draft an "ordinance expressive of the consent of the people of Texas to the terms, conditions, and guarantees" contained in the joint resolution. The members of this committee were: A. S. Lipscomb, Francis Moore, James Love, Isaac Van Zandt, Wm. L. Cazneau, L. D. Evans, H. G. Runnels, John Hemphill, A. Pinckney Henderson,¹⁰ J. M. Lewis, R. E. B. Baylor, James Davis, G. W. Smith, John Caldwell, and G. A. Everts. These met in the evening, and remained in session until almost midnight before they accepted

⁸*Texas National Register* (Washington), July 17, 1845.

⁹As Rusk had been a member of the convention of 1836, he was not a novice in constitution making. Since then he had held the important offices of Secretary of War, Chief Justice of the Supreme Court, and major general of the militia. Baker, *A Texas Scrap Book*, 264.

¹⁰J. Pinckney Henderson was perhaps the ablest member of this committee. He had served the Republic as Attorney General, Secretary of State, and Minister Plenipotentiary to France, England, and the United States. QUARTERLY OF THE TEXAS HISTORICAL ASSOCIATION, I, 190-195.

the terms offered in the first and second sections of the joint resolution for annexing Texas to the United States.¹¹

The convention that held its first formal meeting at the capitol on the morning of July 4, is generally conceded to have been the "ablest political body that ever assembled in Texas," and "it may be seriously doubted whether at the present time a body of delegates could be selected who would represent an equal variety of legal knowledge and an equally extensive experience in the administration of laws."¹² They exhibited a great diversity of opinions, wishes, and views, and the very object for which they had assembled was of such a nature as to develop the most conflicting opinions and the most opposite theories. Therefore, it was often necessary to effect a compromise before a satisfactory agreement could be reached.

When the session opened, H. G. Runnels formally proposed Rusk for President, and as no other names were offered, the convention declared him "duly and unanimously elected." He then addressed the assembly, saying:

. . . The objects for which we have assembled deeply interest the people of Texas. We have the hopes of our present population as well as of the millions who may come after us in our hands. . . .

Let us then lay aside all minor considerations, and avoid all subjects calculated to divide us in opinion, and let us march boldly and confidently up to the formation of a Constitution, which, while it secures our own rights, shall satisfy our friends abroad, and meet the sanction of God to whose bountiful providence Texas is already so much indebted. While we insert these great principles which have been sanctioned by time and experience, we should be careful to avoid the introduction of new and untried theories. We should leave those who are to follow us free to adopt such amendments to the system as their experience and intelligence shall suggest and their circumstances render necessary. We have one great object in view, and that is to enter the American Confederacy with becoming dignity and respect.¹³

After the address the convention completed its organization by electing J. H. Raymond, secretary, Wm. Cockburn, doorkeeper, W. Haynie, chaplain, and F. G. Fisher, interpreter.

¹¹*Texas National Register* (Washington), July 17, 1845.

¹²L. W. Winkler, in Johnson, *Texas and Texans*, I, 486.

¹³*Debates of the Convention*, 6-7.

In order to facilitate the work of the convention, President Rusk appointed five standing committees, namely: on the State of the Nation, and on the Executive, Legislative, Judiciary, and General Provisions of the constitution. He, also, appointed a committee of five to prepare rules for the convention. Isaac Van Zandt¹⁴ was chairman of the committee on General Provisions and a member of the committee on rules.¹⁵

The following is a list of delegates elected to the Convention:

Austin county—Oliver Jones and P. M. Cuney.
Brazoria—H. G. Runnels and R. M. Forbes.
Brazos—Samuel Lusk.
Bastrop—John Caldwell.
Colorado—G. W. Brown.
Fannin—G. A. Everts and Lemuel Evans.
Fort Bend—J. B. Miller.
Fayette—R. E. B. Baylor and J. S. Mayfield.
Galveston—R. Bache and J. Love.
Goliad—Wm. L. Hunter.
Gonzales—John D. Anderson.
Houston—Isaac Parker and P. O. Lumpkin.
Harris—Francis Moore, I. W. Brashear, and Alex McGowan.
Harrison—Isaac Van Zandt, S. Holland, and Edward Clark.
Jasper—G. W. Smith.*
Jefferson—J. Armstrong.*
Jackson—F. M. White.
Liberty—J. Davis and G. T. Wood.
Lamar—G. W. Wright and H. R. Latimer.
Montgomery—Sam Houston, James Scott, and A. McNeil.
Matagorda—A. C. Horton.
Milam—I. Standefer.
Nacogdoches—T. J. Rusk, J. L. Hogg, and C. T. Taylor.
Rusk—David Gage.
Robertson—H. J. Jewett and C. Armstrong.
Refugio—J. Powers.
Red River—T. C. Young, A. H. Latimer, and J. T. Mills.

¹⁴Van Zandt had served the Republic as a member of Congress and minister to the United States.

¹⁵*Journal of the Convention*, 17.

*Members of Congress.

San Augustine—J. P. Henderson and N. H. Darnell.

Shelby—R. Rains and A. W. O. Hicks.

Sabine—J. M. Burroughs.

San Patricio—H. L. Kinney.*

Travis—W. L. Cazneau.

Victoria—A. S. Cunningham.*

Washington—A. S. Lipscomb, J. Hemphill, and V. R. Irion.¹⁶

The convention being duly organized, the communication from President Jones was read, the contents of which are given below:

In compliance with one of the provisions of a Joint Resolution of the present Congress, entitled "A Joint Resolution giving the consent of the existing government to the annexation of Texas to the United States" approved on the third inst., I now have the honor to transmit you a copy of the said Joint Resolution properly authenticated at the State Department.

Believing the Convention might have use for them, I also transmit you copies of the following official documents:

1. A joint resolution for annexing Texas to the United States, approved March 1st, 1845.

2. A Proclamation recommending the election of deputies to the Convention. . . .

3. A Proclamation declaring to the people of Texas the actual situation of affairs with Mexico, and a cessation of hostilities between the two countries.

4. Conditions preliminary to a Treaty of Peace between Texas and Mexico. . . .

5. Joint Resolution relative to the introduction of United States troops and for other purposes.

On motion of A. S. Lipscomb, President Rusk appointed a committee, composed of the same members as that of the previous day, to draft an ordinance, "expressing the assent of the convention to the American proposition." This committee, after an absence of a few minutes, reported the following ordinance, and recommended its adoption by the convention:

Whereas the Congress of the United States of America has passed resolutions providing for the annexation of Texas to that Union, which resolutions were approved by the President of the United States on the first day of March, one thousand eight hundred and forty-five; and whereas the President of the United

¹⁶*Debates of the Convention*, 5-6. Houston was elected as a delegate, but since he was in the United States and did not return in time for the convention, C. B. Stewart was permitted to take his seat.

States has submitted to Texas the first and second sections of the said resolution, as the basis upon which Texas may be admitted as one of the States of the said Union; and whereas the existing government of the republic of Texas has assented to the proposals thus made, the terms and conditions of which are as follows:

[The two first sections of the joint resolution of the Congress of the United States are here quoted.]

Now, in order to manifest the assent of the people of this republic, as required in the above recited portions of the said resolutions, we, the deputies of the people of Texas, in convention assembled, in their name, and by their authority, do ordain and declare, that we assent to and accept the proposals, conditions, and guarantees contained in the first and second sections of the resolution of the Congress of the United States aforesaid.¹⁷

Despite his previous objections to the terms proposed by the United States, J. S. Mayfield, former Secretary of State, moved the adoption of the ordinance as submitted by the special committee. Thereupon, without any discussion, the vote was taken and there was but one dissenting voice, R. Bache of Galveston, and he affixed his signature to the resolution after it was adopted by the convention. President Rusk at once sent certified copies of the ordinance to President Jones, to be by him transmitted to the President of the United States.¹⁸ On July 5, Donelson, who, as an interested observer, had been in attendance upon the congress at Washington, arrived in Austin, where Rusk immediately furnished him with a certified copy of the ordinance. This Donelson forwarded by a special messenger to Buchanan.¹⁹

In reply to President Rusk's note accompanying the ordinance Donelson said:

From the date of the acceptance of this Ordinance she [Texas] will have acquired the right to the protection of the United States, and the undersigned is happy to inform you that the President has already taken steps to afford this protection in the most effective manner against future invasion by either the Mexicans or Indians.²⁰

¹⁷*Journal of the Convention*, 8.

¹⁸*Journal of the Convention*, 11.

¹⁹Donelson to Buchanan, July 6, 1845. *Senate Document I*, 29 Congress, 1 Session, I, 96.

²⁰Donelson to Rusk, July 6, 1845. *Texas National Register* (Washington), July 24, 1845.

On the afternoon of June 21, Captain Waggaman arrived at Washington with dispatches for President Jones and Donelson, from General Taylor, who commanded the three thousand troops stationed at Fort Jesup. The substance of these dispatches was to the effect that L. Thomas, the assistant adjutant general, had ordered Taylor to protect Texas against a Mexican invasion.²¹ A few days after receiving this dispatch from General Taylor, Donelson, anticipating with certainty the favorable decision of the convention and seeing the strong temptation which might prompt the Mexicans to make a forced march across the Rio Grande for the purpose of disturbing the convention, had advised General Taylor to advance without delay to the western frontier of Texas and occupy the territory between the Nueces and the Rio Grande.²²

On July 7, the convention adopted a resolution "authorizing and requesting" the American troops to occupy and establish posts without delay on the exposed frontier. Donelson did not encourage an aggressive movement, but as he thought the claim of Texas to the Rio Grande ought to be maintained, he again assured the convention that the United States would, in good faith, maintain the Texan claim. During the first two days of the convention there had been a disposition in some members of the convention to demand in "strong terms" that the Rio Grande be held as the boundary but members of all parties yielded to Donelson's protestation, and gave him the assurance that this would not be made a *sin qua non*.²³

2. *The Formation of the Constitution*

a. *The Executive Department*

One of the first reports considered by the convention was that submitted by the Committee on the Executive. The provisions that the executive power should be vested in a governor chosen biennially by the qualified electors, that he should not be eligible for more than four years in a period of six, that he should appoint

²¹Donelson to Stockton, June 22, 1845. *Senate Documents* I, 29 Congress, 1 Session, I, 86.

²²Donelson to Allen, June 30, 1845. *Senate Documents* I, 29 Congress, 1 Session, I, 95-96.

²³Donelson to Buchanan, July 11, 1845. *Senate Documents* I, 29 Congress, 1 Session, I, 101-104.

all officers not otherwise provided for, that he should have the power to grant pardons and reprieves, and that he should see that all laws were faithfully executed were adopted without much discussion. But the question of veto on legislation received considerable attention, since there was a diversity of opinion as to the propriety and wisdom of vesting this power in the governor. The committee had recommended that the executive's veto be overruled by a majority vote, but Frank Moore, thinking that this would not give the executive sufficient strength, moved to substitute "two-thirds" for "majority." R. E. Baylor declared that if this extent of power was given to the executive, there would be much dissatisfaction and that it would eventually lead to "disastrous consequences." In reply to this Van Zandt said that "power is dangerous," and the only way to disarm it and free it from a dangerous tendency is to divide it. If the unlimited power to enact laws is vested in Congress alone, it will produce more "confusion and disorganization than any power vested in the governor." President Rusk in his discussion dwelt at length upon the advantages of the provision, since it would tend to prevent "hasty legislation" and "too much legislation." A. S. Lipscomb admitted that it would have "a wholesome and salutary effect upon hasty legislation," nevertheless, he considered it inconsistent with the principles of all free governments for the will of the majority to be thwarted by the veto of the governor. Others objected to the veto power, as they were unwilling for the governor "to participate in any manner whatsoever in the legislative power." However, despite the fact that several of the most influential members of the convention opposed the adoption of either the provision as recommended by the committee or the substitute offered by Moore, the latter was adopted by a large majority.²⁴

Another section of the executive committee's report that met with strong opposition was the provision that the Secretary of State should be elected by the qualified voters. The editor of the *Texas National Register* in commenting upon this recommendation said:

This provision is taken from the Mississippi constitution, and embodies the most reprehensible notion of that most reprehensible

²⁴*Debates of the Convention*, 134-146.

government. The governor by this method is made a mere puppet of authority, and for all we can see might with all propriety be dispensed with altogether. He is placed at the head of the department, is made responsible for its management, and is charged with the execution of its duties; yet his subordinate officers are rendered independent of him. He can neither appoint nor remove them. They, like himself, are elected by the people. The Secretary of State, the Treasurer, and the Comptroller are given to the Executive department rather to restrict and thwart the measures and policy of the governor than to aid him in public affairs. . . . To expedite public business and to secure the welfare of the State, the officers of the departments must act together in harmony, and this will not often be the case, unless the governor is authorized to appoint those officers whom he is required to superintend, and for whose defaults he is in some degree responsible.²⁵

On the afternoon of July 18, the convention went into a committee of the whole for further consideration of the report of the Committee on the Executive. Runnels proposed that the Secretary of State be "appointed for a term of four years by the governor, by the advice and consent of the Senate," instead of being elected by the qualified voters as the committee had recommended. These objections were made to this amendment: (1) that it would give the governor too much power and make the secretary his mere tool, (2) that since the duties were entirely distinct and separate, the secretary should derive his authority from the people and not from the governor; and (3) that the governor should have no power that the people could exercise. The reasons given for desiring to vest this power in the governor were: (1) that since their political duties brought them into very close relation, it was very essential for them to work in harmony, and that this would be assured by the governor's making the appointment; (2) that the governor's power would be increased; and (3) that the governor would be responsible for the conduct of the secretary.²⁶

After the convention had discussed the question for some time, R. Bache, of Galveston, proposed that the secretary should be appointed for the same length of time as the governor elect,²⁷ and this recommendation was later adopted by the convention, along

²⁵*Texas National Register* (Washington), July 11, 1845.

²⁶*Debates of the Convention*, 118-132.

²⁷*Debates of the Convention*, 132.

with the proviso that the treasurer and comptroller should be elected biennially by the joint ballot of both houses.²⁸

b. The Judicial Department

Since President Rusk considered the Judicial Department the most important branch of the government, he appointed as members of the Committee on the Judiciary, fifteen of "the most learned judges and soundest lawyers of Texas."²⁹ On July 11, this committee made the following report concerning the judges of the supreme court and of the district courts:

Sec. 5. the Governor shall nominate, and, by and with the consent of two-thirds of the Senate, shall appoint the Judges of the Supreme and District Courts.

Sec. 6. The Judges of the Supreme Court . . . shall hold their offices for seven years.

Sec. 7. The Judges of the District Courts . . . shall hold their offices for six years.³⁰

On July 26 the Convention resolved itself into a committee of the whole for a consideration of this report. As there had been much dissatisfaction with the recommendation that the governor should appoint the judges, W. C. Young proposed that the judges of the supreme court and of the district courts should be elected by a joint vote of both houses. However, this amendment was rejected, and J. M. Lewis offered another amendment providing that the judges should be chosen by the qualified voters.³¹ Just before the convention had assembled, Mississippi had provided this means of selecting her judges, and numerous articles had appeared in Texas papers urging the convention to adopt this plan.³² Nevertheless, a majority of the convention deprecated its introduction into the Texas constitution for these reasons: (1) that all citizens were not capable of determining the fitness of judges, hence many incompetent men might be chosen; (2) that the ablest and best men would not "run for an office," but would often accept an appointment; (3) that the judges might not render an impartial

²⁸*Journal of the Convention*, 354.

²⁹*Texas National Register* (Washington), July 17, 1845.

³⁰*Journal of the House*, 47-48.

³¹*Debates of the Convention*, 261.

³²*Texas National Register* (Washington), July 17, 1845.

decision when their supporters were involved; and (4) that all individual responsibility for their selection would be removed. Therefore, it was provided that the governor should nominate, and, by and with the advice and consent of two-thirds of Senate, should appoint the judges of the supreme court and of the district courts.³³

As the Committee on the Judiciary had not designated the salary for the judges, the convention engaged in a very interesting debate on this subject. Great diversity of opinion was expressed as to the amount they should receive, and sums ranging from fifteen hundred to two thousand dollars were proposed. The address of the President, Rusk, was the most notable speech on the subject.

"As I view it," he said,

we are now engaged in the most important branch of our labors; one which involves to a great extent the present prosperity and the future weal or woe of the people of Texas. I feel no very considerable interest in the arrangement relating to the other officers in the various departments of the government. They will be under the control of the people; and if we adopt some erroneous plan in relation to them, they may easily be rectified. But if we make one false step here, we are gone forever. . . . If we have an intelligent, honest, and correct judiciary, our position is safe. If, on the contrary, we have one which is swayed about by popular clamors, all will be confusion and anarchy. . . . To be a good judge, a man must be a good lawyer. . . . If he is a man of practical talents and integrity, he will have a lucrative employment. . . . If then we do not offer a good salary, we will drive such men from these offices, and will fill them with men who are not guided by the great principles of justice. The sum of fifteen hundred dollars would not purchase a sufficiently extensive library for any man to be prepared for the investigation and determination of the important questions that would come before him. If we do not pay more than this, I shall look upon our judiciary as gone.³⁴

As a majority of the convention thought that fifteen hundred dollars was too small a salary, and that twenty-five hundred was more than Texas could afford to pay at that time, the matter was settled by a compromise voting that the judges of the supreme court should receive a salary of not less than two thousand dollars an-

³³*Journal of the Convention*, 261.

³⁴*Debates of the Convention*, 289-290.

nually, that the judges of the district courts should receive seventeen hundred and fifty dollars annually, and that the salaries should not be increased or decreased during the continuance of an incumbent in office.³⁵ The convention further provided that the judges of both the supreme court and of the district courts should be "removed by the governor, on the address of two-thirds of each House of the Legislature, for wilful neglect of duty or for other reasonable causes, which should not be sufficient ground for impeachment."³⁶

The next part of the report of the Committee on the Judiciary considered was that pertaining to the number of courts that should be created and the jurisdiction of the supreme court and district courts. After deliberating for some time, the convention decided that the judicial power should be vested in a supreme court, in district courts, and in such inferior courts as the legislature might create, that the supreme court should have appellate jurisdiction only, and that the district courts should have original jurisdiction in all criminal cases, of all suits in behalf of the state, of all divorce cases, and of all suits when the matter in controversy was more than one hundred dollars exclusive of interest.³⁷

The extension of trial by jury in cases of equity was debated at length. Although some of the delegates regarded it as an innovation that would threaten the independence of the judiciary, it was adopted as an additional section.³⁸

The Judiciary committee had recommended that "the Judicial power of the State shall be vested in one Supreme Court, in a District Court, and in such inferior Courts as the Legislature may, from time to time, establish."³⁹ J. M. Lewis of Montgomery county said that since it had been considered good policy in several states to establish chancery courts and separate criminal courts, he thought that the legislature should be empowered to establish them "whenever the situation of the country made it right and proper." Accordingly, he moved to strike out "inferior" and insert "others." President Rusk said that he would vote against this amendment:

³⁵*Debates of the Convention*, 292-300.

³⁶*Debates of the Convention*, 300.

³⁷*Journal of the Convention*, 349; *Debates of the Convention*, 486-493.

³⁸*Debates of the Convention*, 267-275.

³⁹*Debates of the Convention*, 32; *Journal of the Convention*, 47.

For, in the first place, he did not conceive there was any necessity of a separate chancery court. By the practice now, you can obtain in the district courts everything you could obtain in chancery. It is a less expensive system to suitors and less difficult in practice. . . . Again: it is established that the state government must be erected upon an economical basis. If you give the Legislature the power to create additional officers, they will invariably establish them.⁴⁰

To this Lewis replied:

I apprehend no danger, and it is to be presumed, that the Legislature would never exercise this power unnecessarily, or to the detriment of the country, as it would consist of representatives of the people whose wishes and interests, it might be fairly presumed, would be known to them.⁴¹

At this point James Davis advanced the argument that chancery courts had been established in Alabama, and that they had not been a success, as they had tended to "multiply the offices of the state, with little benefit to society." Those favoring the establishment of chancery courts tried to establish the fact that it was "exceedingly inconvenient and detrimental to the interests of the people concerned" to have the "same sort of jurisdiction in law and chancery." However, the friends of the system of administering justice in the same court, according to the principles of both law and equity, as the case might demand, won their point when the committee refused to strike out "inferior" and insert "others."⁴²

c. The Legislative Department

One of the most difficult questions that the convention considered was that of the basis of representation for the state legislature. These three plans were proposed: (1) representation in proportion to population; (2) representation in proportion to qualified electors; (3) representation based on the federal ratio, counting all free population plus three-fifths of the slaves. W. B. Ochiltree said that this disagreement over representation was due to the geographical position of Texas.

She has a northern section where her servile institutions cannot

⁴⁰*Debates of the Convention*, 254.

⁴¹*Debates of the Convention*, 254.

⁴²*Debates of the Convention*, 254-257.

be sustained; where manufacturing establishments will be raised and a large number of women and children be congregated, and in some instances there may be a hundred and fifty women and children to one man. When these manufacturing interests get a foothold in our country, you cannot estimate their alarming tendency in relation to our slave institutions. Upon the coast we have a body of rich and luxuriant lands, necessarily to be cultivated by slave labor. Here the proportion of electors is certainly great, for the counties will consist mostly of large plantations, each having its overseer without a family. . . . In the Northwest and West we have a country that will chiefly be occupied by graziers and small farmers.

Then on the extended frontier, exposed at all times to the incursions of Indians and perhaps hostile Mexicans, the proportion of qualified electors was, also, great compared with the population, while in those parts that enjoyed peace and quiet, the number of women and children preponderated.⁴³

On July 7, President Rusk had appointed a committee of eleven members on the Legislative Department, and on July 11, H. G. Runnels, chairman of the committee made a report, three sections of which caused much debate:

Sec. 4. The legislative powers shall be vested in two distinct branches, the one to be styled the Senate and the other the House of Representatives. . . .

Sec. 9. The whole number of Senators shall, at the several periods of making the enumeration, be fixed by the General Assembly; and apportioned among the several districts, to be established by law, according to the number of qualified electors, and shall never be more than one-third nor less than one-fourth of the whole number of representatives.

Sec. 30. The General Assembly shall, at its first meeting . . . cause an enumeration to be made of the free white inhabitants (Indians not taxed, Africans and the descendants of Africans excepted), of the state, designating particularly the number of qualified electors, and the whole number of representatives shall, at the periods of making the enumerations, be fixed by the General Assembly and apportioned among the counties, towns, or cities entitled to separate representation according to the number of qualified electors. . . .⁴⁴

A motion was made to strike out the terms "white" and "not taxed." As Mississippi had recently passed a law permitting In-

⁴³*Debates of the Convention*, 245-246.

⁴⁴*Journal of the Convention*, 55-58.

dians who were taxed to vote, the committee had considered a similar provision because there were many Indians living in Texas who were "intelligent men and good citizens." However, at Rusk's suggestion the motion to strike out "not taxed" was withdrawn, for the term was used in the United States constitution, and he desired to avoid "all conflicting jurisdiction."

The delegates from the west wished to strike out "white," as they believed the committee intended by that to exclude the Mexicans. H. L. Kinney said that this would be injurious to those people, to ourselves, and to the "magnanimous character which the Americans have ever possessed." Besides, it would greatly decrease their representation. There were objections raised to giving the Mexican Indians an equality of "rights and privileges" with the European races, but Runnels said that by no "inference or construction" could the Mexicans be excluded, if, as by the courts of the United States, all except Africans and their descendants were considered white. Nevertheless, a majority of the convention thought that, if the word was retained, the right of many citizens would be abridged by the construction of arbitrary election judges, so it was struck out.⁴⁵

On July 23, when the convention resolved itself into a committee of the whole for further consideration of the basis of representation, J. M. Lewis of Montgomery county proposed to amend section thirty by striking out "according to the qualified electors" and inserting "free white population" or "free population," for otherwise the counties on the western frontier and those containing the cities and the large plantations "would have a much larger representation than the rest of the state." In offering this amendment, he said:

. . . In the city of Galveston, according to the general population, there is certainly a greater number of electors than in any of the counties, and in some of the planting counties the proportion of the electors to the general population will be much greater than in some of the rest of the counties; for there, as in the cities, you find an unsettled population, a great number of persons without families. In the cities there is a large number of clerks and adventurers, also without families. If then you make electors the basis of representation, you will be unjust to this large population. . . . In planting counties the propor-

⁴⁵*Journal of the Convention*, 156-159.

tion of electors is certainly great. For instance, take the counties like Brazoria and Matagorda; they will consist of large plantations each having its overseer without a family. Then a county with a small population, but voting some three or four hundred strong, will have as great a representation upon this principle as a county numbering six or eight thousand souls, and voting also three or four hundred. . . .⁴⁶

The amendment was opposed on various grounds. It was argued that a mere representation of persons was not the basis required, but that property, as well as population, should be considered. James Love of Galveston said that the convention would "violate every principle of a republican government" if it adopted the amendment, for "taxation and representation must be equal. This basis will exclude the large planting portion of the country, which are and will continue to be the largest tax paying portions of the state, from their due weight in representation, and will increase that of those paying less tax." F. J. Moore insisted that within fifteen years slavery would be abolished by popular vote if it was not protected by "some checks or balances," for the state was so divided as to "confine the slave population to one part of it, and the free population to another."⁴⁷

However, those supporting the amendment were just as persistent in demanding "free population" as the proper basis, since they considered "it a fundamental principle that government is founded for the protection and benefit of the whole." Isaac Van Zandt said that he would support the amendment even though it should take away "weight from one portion of the country and give it to another," for he "believed that free white population is the only proper basis."⁴⁸ As President Rusk saw that sectional feeling had become very strong, he suggested that the whole matter be referred to a special committee to devise a compromise. Thereupon, on motion of J. S. Mayfield, all parts of the report relating to the apportionment of representation and to taking the census were referred to the special committee.⁴⁹

This committee considered three propositions as a basis for representation: free population, qualified electors, and the federal

⁴⁶*Debates of the Texas Convention*, 201-205.

⁴⁷*Debates of the Convention*, 202-217.

⁴⁸*Debates of the Convention*, 214-217.

⁴⁹*Journal of the Convention*, 104-106.

basis. After deliberating for more than three weeks, the majority of the committee instructed J. S. Mayfield, its chairman, to make the following recommendations: (1) that the legislature should at its first session, provide for taking the enumeration of the free population of the state, and that the representation in the House should be governed thereby; and (2) that the Senate should consist of not less than nineteen nor more than thirty-three members to be apportioned by the legislature according to the number of qualified electors. In other words, representation in the House should be based on free population and that of the Senate on qualified voters.⁵⁰

When the convention took up the question of representation in the Senate, August 13, Mayfield said that the special committee had recommended qualified electors as the basis in the Senate and free population in the House, as the same struggle that had been carried on in the convention was renewed in the committee, the one side contending for free population, the other for qualified electors. However, as a majority of the committee desired to secure some provision whereby slavery, "the most important institution of the land," should be protected, a proposition to base representation in the Senate upon qualified electors and in the House upon free population was adopted by a large majority.⁵¹

The separate basis for the apportionment of representatives and senators caused much debate. A number of the delegates declared that they did not approve of "any compromise, if any had been made," as they could not perceive "any good which could result from this." Those who advocated "free population" developed a more united and determined opposition, while those who favored the "federal basis" seemed unyielding, but they were in the minority. For some time the convention debated the merits and faults of this proposal. One faction pointed out the unfairness of not giving to the sections paying most of the taxes more representation than to those contributing but little. The other side stood firmly for free population, as they considered it the only "just and equitable" basis. The discussion involved a repetition of the arguments previously employed, until Runnels introduced

⁵⁰*Journal of the Convention*, 221.

⁵¹*Debates of the Convention*, 531-533.

the argument that a protection of slavery would operate alike beneficially upon every county in the state "for," said he,

if we had a strong guarantee, even stronger than this for which I contend, by means of representation in the Senate, I believe that it would induce immigration of that species of property, and thus add greatly to the wealth and prosperity of the country. But, sir, strip this Convention of such protection, and you leave no inducement to such immigration. Many of the slave-holding states have public domain yet unoccupied and uncultivated, and emigrants will remain there on account of the great security of their property. The immigration of that species of property will not only develop the resources of the country, but will enhance the value of the lands. I have no special interests in advocating this doctrine, but I believe that the proposed basis will protect the interests of the state at large.⁵²

This address seemed to have a conciliatory effect, and, as his opponents did not produce any arguments to counteract his influence, a spirit of compromise was soon discernible. As soon as the advocates of qualified electors deemed it advisable, a vote was taken upon the adoption of that part of the report submitted by the special committee, and it was accepted by a vote of forty-four to fourteen.⁵³

The basis of representation in the Senate having been thus agreed upon, the remaining part of the report, which involved the basis for the House, was now considered. G. M. Brown of Colorado county moved to strike out the words "free population" wherever they occurred in the report as submitted by the special committee, and to insert "qualified electors." However, as a majority of the delegates believed that the recommendation made by the committee was the best compromise that could be obtained, Brown's motion was rejected by a vote of forty-one to thirteen. After a short debate, therefore, the proposition that representation in the house should be based upon free population was adopted by an almost unanimous vote.⁵⁴

The other provisions pertaining to the Legislative Department were (1) that all revenue bills should originate in the House, but in the enactment of all other laws the Senate and House should

⁵²*Debates of the Convention*, 534.

⁵³*Debates of the Convention*, 538.

⁵⁴*Debates of the Convention*, 540-543.

have concurrent authority; (2) that the legislature should provide for an enumeration of the free inhabitants and the qualified voters in 1846, 1848, and 1850, and every eight years thereafter, and that the number of representatives should be fixed at the several periods of enumerations; (3) that the Senators should be chosen by the qualified electors for a period of four years, and that the representatives should be chosen in the same way for a period of two years; and (4) that members of each house should receive a compensation of three dollars for every day of attendance.⁵⁵

As the location of the seat of government was very closely associated with that of representation, this was now considered by the convention. After a short discussion Austin was designated as the capital until 1850. At that time an election was to be held, and the city receiving the majority of votes cast should be the capital until 1870, unless the state should be divided previous to that date.⁵⁶

3. Additional Problems Considered

In addition to framing the government, the convention considered various propositions. Of these, that pertaining to the land claims was the most intricate. Lengthy debates were engaged in upon the propriety of inquiring into the forfeitures of land under the laws of the republic. The constitution of 1836 had taken positive grounds in repudiating some of these claims, and it was concluded simply to reaffirm the law as it stood before the convention assembled.

The proposition made by A. S. Cunningham that all persons who left the country for the "purpose of evading a participation in the revolution of 1836, or who refused to participate in it, or who aided or assisted the Mexican enemy" should forfeit all rights of citizenship and such lands as they held, provoked much angry discussion. H. L. Kinney considered this very unjust since it would deprive many loyal Texans of their homes. Furthermore, he believed that the insertion of such a clause in the constitution would keep the United States Congress from approving it, as it would cause so much trouble with Mexico and the people of the

⁵⁵*Journal of the Convention*, 341-346.

⁵⁶*Journal of the Convention*, 340; *Debates of the Convention*, 559-564.

West in settling the dispute over the land situated between the Nueces and the Rio Grande. It was finally agreed, therefore, that all property should remain in precisely the same situation as under the Republic.

An effort was made to suspend all colonization contracts made by the president of the republic. It was contended that these contracts were illegal from the first, since the government had no right to grant lands for colonization purposes while outstanding were large numbers of headright claims, donation warrants and land scrip, the holders of which had an implied right of first choice of location, but had been prevented from making such location by the unprotected condition of the frontier. However, as it was feared that the inclusion of such a provision in the constitution might jeopardize the approval of the constitution by the United States congress, it was provided that a separate ordinance ordering the forfeiture of these contracts should be submitted to a vote of the people at the same time as the constitution. According to this provision, President Jones submitted the ordinance to the people, who on October 13, adopted it by a large majority.

The measures adopted for the protection of the family deserve mention. In addition to exempting from taxation two hundred dollars worth of household goods, it was provided that two hundred acres of land or town lots to the value of two thousand dollars should be free from forced sale, and that the husband could not sell the same without the consent of the wife. This was a retention of the homestead law passed in 1838. The recognition of property rights of married women was very liberal, since it was provided that all property, both real and personal, of the wife before marriage and that acquired afterwards should be her own personal property.⁵⁷

There was great diversity of opinion concerning the recommendation made by the committee on general provisions that "no corporate body shall, hereafter, be created, renewed, or extended with banking privileges."⁵⁸ However, following the course recently pursued by the Democrats in the United States, the creation of banks was prohibited.⁵⁹

⁵⁷*Debates of the Convention*, 395-420, 694-699.

⁵⁸*Debates of the Convention*, 278.

⁵⁹*Debates of the Convention*, 452.

The committee made this recommendation concerning taxation:

Taxation shall be equal and uniform throughout the State. All property on which taxes may be levied in this state shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property shall be taxed higher than another species of property of equal value, on which taxes shall be levied. The Legislature shall have the power to lay an income tax and to tax all persons pursuing any occupation, trade, or profession.⁶⁰

A. S. Lipscomb moved to strike out "on which taxes may be levied" and "occupation." In support of this motion he said:

The object of taxation is to support the protection given to property; and one species of property should be protected to the same extent as another. . . . I object to the section as reported by the committee. Will it not leave it to the Legislature to drop from taxation the property that it may think proper? This will give rise to jealousies, as one species of interest will be fostered in one part of the country, and another in another, according to climate, soil, and other circumstances. . . . To the concluding part of this section, I object for this reason. I do not believe that the planter, after he has paid a tax on his property, should be taxed for the occupation that he pursues. The planter's is an occupation as much as anything else.⁶¹

As it was provided that the word occupation should not be construed to embrace farming or any mechanical trades, the latter part of the amendment was withdrawn.⁶² It was further provided that only by a vote of two-thirds of both houses could property be exempt from taxation. With these two exceptions, the section was adopted as recommended by the committee.⁶³

Since a general diffusion of knowledge was considered "essential to the preservation of the rights and liberties of the people," the legislature was directed as early as practicable to establish free schools throughout the state and to furnish means for their support by taxation. It was, also, provided that one-tenth of all the revenue of the state derived from taxation should be set aside as a perpetual school fund, and that this fund should not be used for any other purpose. Public lands heretofore granted

⁶⁰*Debates of the Convention*, 278.

⁶¹*Debates of the Convention*, 428.

⁶²*Debates of the Convention*, 429.

⁶³*Journal of the Convention*, 358.

or to be hereafter granted for public school purposes should not be sold for a period of at least twenty years. However, they should be leased in such a manner as the legislature should direct, and the fund thus created should be used for the benefit of the common free schools. Furthermore, every new county created should receive a quantity of school land equal to that granted to counties then in existence.⁶⁴

The committee on general provisions recommended that any amendment that should be accepted by a majority of two-thirds of both houses and a majority of the qualified electors should become a part of the constitution.⁶⁵

However, in order to give greater stability to the constitution, A. C. Horton offered as a substitute for this recommendation that the legislature by a majority vote of two-thirds should propose the amendments, that they should be ratified by a majority of the people, and that they should be adopted by both houses, before they should become a part of the constitution. After a short discussion this substitute was accepted by a majority vote of twenty-six.⁶⁶

4. The Attempt to Establish a Provisional Government

The dissatisfaction with the existing government, so prevalent at the time, showed itself in the convention, as President Jones's friendliness toward annexation was regarded with suspicion. Therefore, several of the most prominent members of the convention, including such men as the President, Rusk, J. L. Hogg, and A. C. Horton deemed it advisable, when they first assembled, to establish a provisional government.⁶⁷ As the President had not anticipated that the anti-party men would attempt to overthrow his administration, and as congress was in session, he remained at Washington. The opposition, however, was much stronger than he anticipated, so W. B. Ochiltree, former secretary of state, addressed to President Jones the following letter:

I think that by all means you should come to Austin *with the*

⁶⁴*Journal of the Convention*, 360-1.

⁶⁵*Debates of the Convention*, 279.

⁶⁶*Debates of the Convention*, 279.

⁶⁷Lubbock, *Six Decades in Texas*, 174.

Government at the earliest possible date. This convention is mighty to do mischief. My opinion is that your enemies are actively, busily at work to undermine you. Matters that every principle of precedent and propriety require should be carried on through the existing government are being arranged by the Convention. The reason given is that your excellency has called them to the seat of Government and that you are absent—that the Archives of the State Department are at Washington. A letter dated June 30, by Mr. Donelson, to the Secretary of State, has been furnished by him to the Convention directly. This affords room for animadversion. The western members are silent; objections come from other parts of the country.⁶⁸

A little later James L. Farquar, a member of the convention, wrote him:

. . . I arrived at this place on the 23d instant, and I find considerable excitement among the members of the Convention. . . . I am certain of one thing; that is, if you do not come, we will get into confusion. . . . You know your duty, and I believe that it will be performed; but I write to inform you of the excitement prevailing. Many of your old friends wish you to come up.⁶⁹

As the President did not yield to Farquar's entreaty, Van Irion addressed him, saying:

I believe it is the intention of some members of the convention to make an attempt to destroy and abolish the existing government and to establish in its stead *one* of a provisional character. To my surprise and astonishment, I find that some of the most distinguished and able members of this body are inclined to favor the measure. . . . Nothing definite as yet has been done. . . . They have been awaiting your expected arrival to begin operations, although whether you come or not, the attempt will be made.⁷⁰

Despite the many entreaties of his friends, President Jones, however, refused to "visit" Austin, as he desired to show his enemies that he "was not to be frightened."⁷¹ Therefore, Ochiltree wrote him again:

⁶⁸Ochiltree to Jones, July 8, 1845. Jones, *Memoranda and Official Correspondence of the Republic of Texas*, 477.

⁶⁹Farquar to Jones, July 25, 1845. Jones, *Memoranda and Official Correspondence of the Republic of Texas*, 479.

⁷⁰Van Irion to Jones, July 29, 1845. Jones, *Memoranda and Official Correspondence of the Republic of Texas*, 480-481.

⁷¹Jones, *Memoranda and Official Correspondence of the Republic of Texas*, 481.

The Convention is rapidly drawing to a close, and I find the opinion gaining ground that on the passage of the Constitution by the Convention it will operate as a *supersedeas* of the present government. . . . If you were now here, your presence would do much to allay the feeling which a few persons are most industriously endeavoring to get up. I find many men busy in that behalf, from whom I little expected such a course.⁷²

Upon the receipt of this letter, the President, the Secretary of State, and the Treasurer "hastened to Austin."⁷³

In a letter to Hamilton Stuart, the editor of the *Civilian and Gazette* (Galveston), Jones said:

I received information from the most reliable and authentic sources that the emissaries and factionists were at work in favor of abolishing the existing government and establishing a provisional one in its place. . . . This I knew would throw everything into confusion, and would defeat annexation altogether. I felt strong conviction that anarchy and civil war would necessarily ensue (for the people had conferred no such powers on the Convention), and that in such a situation we could neither prepare for admission into the Union or be admitted if we were prepared, for the opponents of annexation in the United States would, under such circumstances, have been able to defeat it. This, all true friends of annexation saw and believed. So . . . I hastened with some of my cabinet to Austin.⁷⁴

Upon the President's arrival, R. Bache, a member of the Committee on the State and Nation, introduced a resolution providing that a committee should be "appointed to wait upon the President of the Republic of Texas, to consult with him concerning the transfer of the government by the Convention, from an independent Republic, to a Republican State Government."⁷⁵

However, F. Moore moved to lay the resolution upon the table, saying:

I know the object in view is to establish a provisional government to supplant the present. . . . I believe that every move of policy should induce the people to retain the present form of government and the nationality of Texas until that period when we shall have the final assurance of merging our nationality in

⁷²Ochiltree to Jones, August 6, 1845. Jones, *Memoranda and Official Correspondence of the Republic of Texas*, 483.

⁷³Jones, *Letters Relating to the History of Annexation*, 16; *Texas National Register* (Washington), August 14, 1845.

⁷⁴Jones, *Letters Relating to the History of Annexation*, 16-17.

⁷⁵*Journal of the Convention*, 247.

the great union of North America. If we rashly and indiscreetly part with our existence as a nation, we place ourselves in the dependent position of a territory; we throw off the treaty making power, and cut off all our treaties now established with the nations of the earth, placing ourselves at the beck and call and under the control of our enemies in the United States. . . . If we take this step, our revenue will be cut off; our nation instead of commanding the respect of other nations will merely excite their pity. If our enemies in the United States succeed, and two or three have been elected adverse to us, perhaps one vote will defeat us in the Senate, . . . and we shall then have to depend upon the treaty making power. If we retain our government and President, we can then immediately form a new treaty. And there is no question but that public opinion in a year or two more will be so overwhelmingly in favor of sustaining Mr. Polk, as to carry even a treaty through the Senate.⁷⁶

As there was no further discussion, the question was referred to the Committee on the State and Nation for consideration. On August 18, this committee submitted an ordinance providing for the abolition of the existing government and the establishment "in lieu thereof, of a government of the State of Texas, as a separate and independent state of the American confederacy" until "accepted as a state in the American Union." In order to prevent "inconvenience or embarrassment" by this change of government, preparatory to the incorporation of Texas as a state in the American Union, the ordinance provided: that all officers under the existing government, except the President, Vice-President, the President's cabinet, the foreign ministers, *chargés* and foreign agents, should remain in office until superseded by duly elected state officers.⁷⁷

However, this effort to supersede the existing government by the establishment of a provisional government met with a most signal defeat, as many of the most ardent annexationists believed that its inevitable effect would be to destroy annexation perhaps forever. The motion made by Wm. L. Cazneau, August 23, for a consideration of the report as made by the committee was defeated by a vote of twenty-nine to sixteen.⁷⁸ Despite the fact that such a large majority of the convention had voted against a con-

⁷⁶*Journal of the Convention*, 585.

⁷⁷*Journal of the Convention*, 265-269; *Debates of the Convention*, 651-655.

⁷⁸*Journal of the Convention*, 299.

sideration of the ordinance, President Rusk, D. Gage, J. S. Mayfield, J. L. Hogg, and A. C. Horton continued their opposition to the Jones government throughout the convention, as there were several important steps yet to be taken before annexation would be complete. This opposition was so strong that President Jones said, "From this time I had no further material control over the question of annexation, and my duties in connection with it became merely ministerial."⁷⁹

The *Telegraph and Texas Register* of August 28 said:

With the Convention Maj. D. [Donelson] had and could have no official intercourse, though as an individual, he communicated frankly with the leading members of that body in regard to such points as were likely to interpose difficulties in the way of the passage of that instrument by the United States Congress. He considered it highly important that every movement on the part of Texas should be made in an orderly and regular manner, and deprecated any movement likely to produce excitement or confusion in this country. For this reason he discouraged any attempt on the part of the convention to abolish the existing government before the acceptance of the new constitution on the part of the U. S.

As the effort to establish a provisional government had been defeated and as the convention desired that no inconvenience should arise in the change from a national government to a state government, it was provided: (1) That the President should submit the constitution and annexation to the people; (2) that the returns of the election should be canvassed on the second Monday in November; (3) that the President of Texas should forward to the President of the United States duplicate copies of the constitution, if it should be adopted; (4) that the constitution, if adopted, should go into effect after the organization of the state government; (5) that the President should order an election on the third Monday in December to elect a governor, lieutenant-governor, and members of the legislature; (6) that the President should convene Congress at an early date; and (7) that the President should deliver to the governor, after his inauguration, "all records, public money, documents, archives, and public property of every description whatsoever under the control of the Executive

⁷⁹Jones, *Letters Relating to the Annexation of Texas*, 17.

branch of government, and that the governor shall dispose of the same in such a matter as the Legislature may direct."⁸⁰

The provisions for the establishment of the state government practically completed the work of the convention, so the special committee appointed by the President to "supervise and make grammatical and other corrections in the different parts of the constitution," on August 25, reported corrections in the sections of general provisions, education, and impeachment. After these corrections were made, a committee was appointed to superintend the enrollment of the constitution. As this committee found no mistakes in the various provisions, as they were enrolled, the convention unanimously adopted the constitution.⁸¹ Thereupon, President Rusk addressed the convention, saying:

The important duties we were called upon to perform, on the part of the people of Texas, are discharged, and I trust in a manner which will be satisfactory to the people of Texas, satisfactory to the Congress and to the people of the United States, and satisfactory to the friends of the republican government throughout the civilized world.

I trust that each member of this convention will do all in his power to make this constitution as acceptable to the people as possible, in order that it may appear to the government of the United States that we go into the Union in the proper manner, and that the vile slander hurled against us by our enemies, that we are a band of disorganizers, is false and foul.

I trust, too, that when this constitution shall go into operation, the angry passions attendant upon political dissensions will be hushed, that all sectional feelings and jealousies and the strife of personal ambition will cease, and that for many years to come it will continue the organic law of a people united as a band of brothers, animated by the feelings of the human heart, and prompted in action by that pure and lively patriotism which has characterized Texas thus far.

Immediately after this address the convention, after a session of fifty-six days, adjourned *sine die*.⁸²

Just a few days after the convention adjourned, Rusk forwarded to Calhoun copies of a series of resolutions passed by the convention in approbation of the course pursued by the late President

⁸⁰*Journal of the Convention*, 304-306; 322-327.

⁸¹*Debates of the Convention*, 757.

⁸²*Debates of the Convention*, 758-759.

and his administration relative to annexation. In reply to Rusk's letter accompanying these resolutions Calhoun said:

I accept this highly honorable approval of the distinguished body over which you presided, of the part I performed towards the consummation of this great measure, with sincere pleasure and gratitude.

Taken altogether it is one of the most remarkable events in our history; and I am proud to have my name associated with it. One of the most striking circumstances is the unanimity and enthusiasm with which the people of Texas returned into our great and glorious Union, in spite of every obstacle thrown in their way, and every seduction presented to influence their decision. It speaks a volume in favor of their intelligence and patriotism; and is at the same time, the highest eulogy ever pronounced in favor of our free and popular institution; and will be felt to be so throughout the civilized world.⁸³

5. The Establishment of a State Government

The terms of annexation proposed by the United States laid down the broad provisions that the constitution should provide a republican form of government, that it should be acceptable to the people of the United States, and that it should be ratified by the people of Texas. In framing the constitution the delegates had kept the first two requirements constantly in mind, and many doubtful questions were discarded to avoid opposition in the United States Congress. Therefore, President Jones, immediately after the adjournment of the convention, took action to meet the last provision. Accordingly, on August 28 he issued a proclamation "requiring and directing" the chief justices and the associate justices in the absence of the chief justices, to hold an election in their respective counties on October 13, for the purpose of "taking the sense of the people of Texas in regard to the adoption or rejection of the said constitution, also for the purpose of taking their opinions for and against annexation, the election to be conducted, the votes taken, and returns made in conformity with the existing laws regulating elections. . . . The votes of the electors were also then and there to be taken upon the rejection or adoption of

⁸³Calhoun to Rusk, September 20, 1845. *Niles' National Register*, LXIX, 100.

the ordinance adopted by the convention in relation to the colonization contracts."⁸⁴

There was, however, much indifference manifested by all classes toward the election. *The Houston Telegraph* of October 22 said that not more than one-half of the electors in the city of Galveston voted.⁸⁵ There was much complaint from those opposing annexation as the convention had provided that the voting should be *viva voce*. Elliot in a letter to Aberdeen said that President Jones informed him, January 18, 1846, that the vote cast was about six thousand, which was not half as many as in the presidential election of 1844.⁸⁶ Many, however, refrained from voting, as they considered the result certain.

Although no information, official or otherwise, had been given out as to the exact number of votes cast, President Jones, November 10, announced that the state constitution and the American proposal for annexation had been accepted by "a majority of the popular vote," and that an election should be held, December 15, for the purpose of selecting a governor, lieutenant governor, and members of the state legislature.⁸⁷

The following is an excerpt from the *Texas National Register* concerning the election of the members of the legislature:

The people should be exceedingly careful to make judicious selections in choosing their representatives to the first legislature. The trust to be confided in them is of great moment. The duties of the legislators will be complete and arduous in execution. Our laws will have to be modified to suit the change of government. The payment of our debts must be provided for. Our domain must be made available to meet the demands of our creditors. Every department will have to be organized, and the proper performance of that organization will in many instances depend upon legislative enactments. Another duty of paramount importance devolving upon the legislature is the election of senators to the United States Congress. . . . Let them (the electors) call

⁸⁴*Houston Telegraph*, September 24, 1845; *Proclamation Papers of the Republic of Texas*, 1845. MS., State Library.

⁸⁵The votes cast in Galveston were: for the adoption of the constitution 304, against 83; for annexation 270, against 121; for the adoption of the colonization ordinance 289, against 65. *Houston Telegraph*, October 22, 1845.

⁸⁶Elliot to Aberdeen, January 18, 1846. Adams, *British Correspondence Concerning Texas*, 583.

⁸⁷*Texas National Register* (Austin), November 29, 1845.

upon every man who solicits their suffrage and know for whom he would cast his vote for senators. Instruct your representatives through the ballot box; designate the men of your choice and then nothing will be left to chance, nothing won or lost by electioneering and bargaining. We must select our representatives from among those whose interests are identified with the country. All who claim to be Democrats are not so. A number of them have been proselyted since the last presidential election in the United States and the consequent ascendancy of Democratic principles in this country. If the people should be so blind as to take any of these new fledged converts upon trust and place them in office, they would create division and disunion in the Democratic party.⁸⁸

Candidates for the several offices in the state government did not await the President's proclamation to make their announcement. Even before the constitutional convention had adjourned, J. P. Henderson of San Augustine county and A. C. Horton of Matagorda county had consented to be candidates for governor and lieutenant governor.⁸⁹ After these names had been before the public for some time, J. B. Miller of Washington county and N. H. Darnell of San Augustine county were nominated for governor and lieutenant governor, respectively. However, there was very little interest manifested in the campaign, even though there were two candidates for each office. Henderson defeated Miller by a majority vote of six thousand, but Darnell received a majority over Horton of only one hundred and twenty-one.⁹⁰

As the convention had "authorized and required" the President to forward by special messenger "certified copies of the Constitution" to President Polk in time for them to be received before Congress met in December, President Jones, immediately after the constitution was ratified, appointed N. H. Darnell for this mission.⁹¹ These were received in due time, so the President in his message to Congress, December 2, 1845, said:

The terms of annexation which were offered by the United States to Texas having been accepted by Texas, the public faith of both parties is solemnly pledged to the compact of their union. Nothing remains to consummate the event, but the passage of an act by congress to admit the State of Texas into the Union on

⁸⁸*Texas National Register* (Washington), November 15, 1845.

⁸⁹*Texas National Register* (Washington), November 15, 1845.

⁹⁰Lubbock, *Six Decades in Texas*, 176.

⁹¹Lubbock, *Six Decades in Texas*, 176.

equal footing with the original states. . . . Questions deeply interesting to Texas, in common with the other states; the extension of our revenue laws and the judiciary system over her people and territory, as well as matters of local interest, will claim the early attention of Congress; and, therefore, upon every principle of republican government, she ought to be represented in that body without unnecessary delay. I cannot too earnestly recommend prompt action on this important subject.⁹²

Furthermore, December 9, the President transmitted to the Senate and House of Representatives President Jones's letter communicating the duplicate copies of the constitution and the official information that the constitution had been "ratified, confirmed, and adopted by the people of Texas."⁹³ Therefore, the question of annexation was before Congress for its final action. The House referred these documents to the Committee on Territories, and on the following day Stephen A. Douglas reported this resolution:

That the State of Texas shall be one, and is hereby declared to be one, of the states of the Union on equal footing with the original states in all respects whatever.

That until the representatives in Congress shall be appointed according to an enumeration of the inhabitants of the United States, the state of Texas shall be entitled to choose two representatives.⁹⁴

Protests, petitions, and resolutions against admitting Texas poured into the House. Nevertheless, the annexationists showed a determined effort to force the measure through as quickly as possible. When a vote was ordered upon the adoption of the resolution as submitted, W. Hunt of New York asked to be excused from voting, as he had not been allowed the "least opportunity of debate or amendment on this, the greatest and most momentous question presented to any congress since the foundation of the government." Despite the efforts to prevent debate, J. Rockwall of Massachusetts succeeded in getting the floor, and moved to recommit the matter with instructions to bring in an amendment prohibiting slavery in Texas. After this a long and intricate de-

⁹²*Congressional Globe*, 29 Congress, 1 Session, 4; *Niles' National Register* (Baltimore), LXIX, 231.

⁹³*Congressional Globe*, 29 Congress, 1 Session, 37; *Niles' National Register*, LXIX, 231.

⁹⁴*Congressional Globe*, 29 Congress, 1 Session, 40; *Niles' National Register* (Baltimore), LXIX, 230.

bate followed, but all opposition proved in vain, and the resolution was adopted by a vote of one hundred and forty-one to fifty-six.⁹⁵

On December 10, the bill which had been introduced into the Senate for the admission of Texas was referred to the Committee on the Judiciary for consideration. A few days later Chester Ashley, the chairman of this committee, recommended that the House resolution should be adopted in lieu of the Senate resolution. Thereupon, Daniel Webster spoke at length against the admission of Texas, basing his argument mostly on slavery and slave representation. However, he admitted that he was "quite aware that the House resolution would be adopted, since it had passed the House by such a large majority." In reply to Webster's address, J. M. Berrien, a southern Whig opponent of annexation, said that "the pledge of this government has been given, and that it must be redeemed." J. W. Huntington of Connecticut, however, protested against the adoption of the House resolution, as he considered it both "unconstitutional and inexpedient" for Texas to be admitted with two representatives without knowing that she has sufficient population to entitle her to such representation. These protests, however, were in vain, for when a vote was taken upon the adoption of the House resolution, December 22, it carried by a majority of seventeen votes. Just seven days later President Polk signed the joint resolution, and Secretary Buchanan promptly forwarded a copy of it to President Jones,⁹⁶ who, in compliance with his instructions from the convention, issued a proclamation directing the legislature to assemble at Austin, February 16, 1846, for the purpose of organizing a state government.⁹⁷

As President Jones had ordered the capitol to be repaired and the archives and state offices to be removed from Washington to Austin in November, all was in readiness for the legislature when it assembled. The capitol building, which had been used as a church and school since February, 1842, was again occupied as a legislative hall.

⁹⁵*Congressional Globe*, 29 Congress, 1 Session, 65; *Niles' National Register* (Baltimore), LXIX, 247.

⁹⁶*Congressional Globe*, 29 Congress, 1 Session, 88-92; *Niles' National Register*, LXIX, 259-277.

⁹⁷*Proclamation Papers of the Republic of Texas*, 1844-1846, in Texas Archives, State Library.

Since the legislature spent the first two days in organizing, Governor Henderson was not inaugurated until February 19. In his address he congratulated the people upon the consummation of annexation, and expressed a desire for a spirit of "harmony and forbearance." Although he expressed a regret that so much "power and patronage" had been granted the executive, he promised to act "cautiously and impartially" in performing his official duties, and to consider only the good of the public. He closed his address with this vigorous paragraph:

We have this day fully entered the Union of the North American States. Let us give our friends, who so boldly and nobly advocated our cause, and the friends of American liberty, no reason to regret their efforts in our behalf. Henceforth the prosperity of our sister states will be our prosperity, their happiness our happiness, their quarrels will be our quarrels, and in their wars we will fully participate.⁹⁸

Governor Henderson completed the organization of the state government by appointing David G. Burnet, Secretary of State, James B. Shaw, Comptroller, T. W. Ward, Land Commissioner, W. G. Cooke, Adjutant-General, and V. E. Howard, Attorney General. Thomas J. Rusk and Sam Houston were chosen by the legislature as United States senators.⁹⁹

The Washington Union of February 19 said: "We hail the incorporation of Texas into our Union as one of the most remarkable events of the age. It was accomplished by no violence of the sword; no effusion of blood; no corruption of the people; and by no constraint upon their intentions; but in the spirit of the age, according to the present principles of government, by the free consent of the two republics. Well may President Jones have said: 'It was left for the Anglo-American inhabitants of the western continent to furnish a new mode of enlarging the bounds of empires by the more natural tendency and operation of the principles of free Government.' "

⁹⁸*Journal of the Senate*, 1 Texas Legislature, 1 Session, 1-16.

⁹⁹*Journal of the Senate*, 1 Texas Legislature, 1 Session, 24.

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